



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

October 28, 1994

Ms. Alesia L. Sanchez
Legal Assistant
Legal Services, 110-1A
Texas Department of Insurance
P.O. Box 149104
Austin, Texas 78714-9104

OR94-713

Dear Ms. Sanchez:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 29336.

The Texas Department of Insurance ("the department") received a request for "a copy of the recent report that Milliman & Robertson Inc. provided to you on the expected performance of the reinsurance facility under guaranteed issue." The department seeks to withhold the requested report from required public disclosure based on section 552.106 of the Government Code.

Section 552.106 excepts from required public disclosure:

A draft or working paper involved in the preparation of proposed legislation.

You assert that the report at issue is a legislative work product. You state that

[p]ursuant to [section] 6 of HB 2055, the 73rd Texas Legislature directed TDI "... to initiate a comprehensive study of the reinsurance system established by Subchapter F, Chapter 26, Insurance Code ..." TDI was also instructed to report its findings to the governor, lieutenant governor, and speaker of the house of

representatives not later than January 1, 1995. Additionally, Section 5 of HB 2055 created the Joint Interim Committee on Health Insurance Access (committee). The committee is charged to prepare a report for the next Legislature with recommendations for legislation on the subject of guaranteed issue.

You also enclosed a letter from Representative Mike Martin, Co-Chair of the Committee on Health Insurance Access, in which the representative states that he considers the report to be legislative work product.

Section 552.106 of the Government Code applies to information that pertains to the deliberative processes of a governmental body relevant to the enactment of legislation. *See* Open Records Decision No. 429 (1985). The purpose of this exception is to encourage frank discussion on policy matters between advisors of a legislative body and the legislative body. *See* Open Records Decision No. 460 (1987). However, the exception does not protect purely factual material. *See id.* Nor does it protect information relating to legislative materials prepared by persons without an official responsibility to do so. *See* Open Records Decision No. 429.

Because of the directive from the legislature, the exception may apply in this situation. We have reviewed the study. It contains analyses of facts as well as recommendations and proposals. We conclude that the study is a working paper to be used in the legislative process. Therefore, the department may withhold the study from required public disclosure based on section 552.106 of the Government Code.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, appearing to read "Kay Guajardo". The signature is fluid and cursive, with the first name "Kay" and last name "Guajardo" clearly distinguishable.

Kay Guajardo
Assistant Attorney General
Open Government Section

KHG/TCC/rho

Ref.: ID# 29336

Enclosures: Submitted documents

cc: Ms. Laura Johannes
The Wall Street Journal
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(w/o enclosures)